

THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIAN LANDAU,

Plaintiff,
v.

: 3:15-CV-1327
(JUDGE MARIANI)

MARIROSA LAMAS, et al.,

Defendants.

ORDER

AND NOW, THIS 1st DAY OF AUGUST, 2019, upon *de novo* review of

Magistrate Judge Carlson's Report and Recommendations ("R&Rs") (Doc. 203, Doc. 204,

Doc. 205), for the reasons set forth in the R&Rs and this Court's accompanying

Memorandum Opinions, **IT IS HEREBY ORDERED THAT:**

1. With respect to the R&R (Doc. 205) regarding Defendants' first motion for summary judgment (Doc. 170) on the grounds of failure to exhaust administrative remedies:
 - a. DOC Defendants'¹ Objections (Doc. 213) are **OVERRULED** for the reasons set forth in this Court's accompanying Memorandum Opinion.
 - b. The R&R (Doc. 205) is **ADOPTED**.

¹ "DOC Defendants" are Marirosa Lamas, Steven Glunt, Tammy Ferguson, Mark Garman, Bobbi Jo Salamon, Eric Tice, Lieutenant Hoover, Lieutenant Vance, Jack O. Evans, Michael Dooley, Joanne Gallo, Lieutenant Drew Young, Sergeant Mark Harpster, Sergeant Tommy Rogers, Corrections Officer Stacie Bumbarger, Corrections Officer Matthew Foster, Corrections Officer Lucas Nicholas, Corrections Officer Cienfuegos, Corrections Officer Brandon Snyder, and Corrections Officer Trainee Miller. "Defendants" include all defendants (i.e., DOC Defendants and Defendant Rebecca Amber Zong).

- c. Defendants' first motion for summary judgment (Doc. 170) is **DENIED**.
- 2. With respect to the R&R (Doc. 203) regarding Defendants' second motion for summary judgment (Doc. 174) on the grounds of the affirmative defenses of consent and qualified immunity:
 - a. DOC Defendants' Objections (Doc. 207) are **OVERRULED** for the reasons set forth in this Court's accompanying Memorandum Opinion.
 - b. The R&R (Doc. 203) is **ADOPTED**.
 - c. Defendants' second motion for summary judgment (Doc. 174) is **DENIED**.
- 3. With respect to the R&R (Doc. 204) regarding DOC Defendants' third motion for summary judgment (Doc. 178):
 - a. Plaintiff's Objections (Doc. 219) are **OVERRULED** for the reasons set forth in this Court's accompanying Memorandum Opinion.
 - b. DOC Defendants' Objections (Doc. 211) are **SUSTAINED IN PART AND OVERRULED IN PART** as fully set forth in this Court's accompanying Memorandum Opinion.
 - c. The R&R (Doc. 204) is **ADOPTED IN PART AND NOT ADOPTED IN PART**; specifically, DOC Defendants' third motion for summary judgment (Doc. 178) is **GRANTED IN PART AND DENIED IN PART** as follows:
 - i. DOC Defendants' third motion for summary judgment is **GRANTED** with respect to Plaintiff's Eighth Amendment deliberate indifference

claim (Count II) as to Defendants Harpster, Snyder, Vance, Tice, Hoover, Lamas, Glunt, Ferguson, Garman, Salamon, Evans, Dooley, Gallo, and Young and **DENIED** as to Defendants Rogers, Bumbarger, Nicholas, Cienfuegos, Foster, and Miller. Judgment is hereby entered **IN FAVOR OF** Defendants Harpster, Snyder, Vance, Tice, Hoover, Lamas, Glunt, Ferguson, Garman, Salamon, Evans, Dooley, Gallo, and Young on Count II and **AGAINST Plaintiff** on Count II with respect to these fourteen defendants.

- ii. DOC Defendants' third motion for summary judgment is **DENIED** with respect to Plaintiff's Fourteenth Amendment invasion of privacy claim (Count III).
- iii. DOC Defendants' third motion for summary judgment is **GRANTED** with respect to Plaintiff's Fourth and Eighth Amendment failure-to-intervene claim (Count V) as to Defendants Harpster and Snyder and **DENIED** as to Defendants Rogers, Bumbarger, Nicholas, Cienfuegos, Foster, and Miller. Judgment is hereby entered **IN FAVOR OF** Defendants Harpster and Snyder on Count V and **AGAINST Plaintiff** on Count V with respect to these two defendants.

- iv. DOC Defendants' third motion for summary judgment is **GRANTED** with respect to Plaintiff's Fourth and Eighth Amendment failure-to-supervise claim (Count VI) as to Defendants Lamas, Glunt, Ferguson, Harpster, Garman, and Salamon and **DENIED** as to Defendant Rogers. Judgment is hereby entered **IN FAVOR OF** Defendants Lamas, Glunt, Ferguson, Harpster, Garman, and Salamon on Count VI and **AGAINST** Plaintiff on Count VI with respect to these six defendants.
- v. DOC Defendants' third motion for summary judgment is **GRANTED** with respect to Plaintiff's Fourth and Eighth Amendment failure-to-train claim (Count VII) as to all named defendants (Garman, Salamon, Evans, Dooley, Gallo, and Young). Judgment is hereby entered **IN FAVOR OF** all named defendants (Garman, Salamon, Evans, Dooley, Gallo, and Young) and **AGAINST** Plaintiff on Count VII.
- vi. DOC Defendants' third motion for summary judgment is **GRANTED** with respect to Plaintiff's Fourteenth Amendment equal protection claim (Count IX) as to all named defendants (Lamas, Glunt, Ferguson, Tice, Hoover, Vance, Evans, Dooley, Gallo, Young, Salamon, Garman, Harpster, and Rogers). Judgment is hereby

entered **IN FAVOR OF** all named defendants (Lamas, Glunt, Ferguson, Tice, Hoover, Vance, Evans, Dooley, Gallo, Young, Salamon, Garman, Harpster, and Rogers) and **AGAINST** Plaintiff on Count IX.

- vii. DOC Defendants' third motion for summary judgment is **GRANTED** with respect to Plaintiff's intentional infliction of emotional distress ("IIED") claim (Count XIV) as to all DOC Defendants (Glunt, Ferguson, Tice, Hoover, Vance, Harpster, Rogers, Salamon, Bumbarger, Foster, Nicholas, Cienfuegos, and Miller). For the reasons stated in the accompanying Memorandum Opinion, summary judgment with respect to the IIED claim is also granted to Defendant Zong. Judgment is hereby entered **IN FAVOR OF** all named defendants (Glunt, Ferguson, Tice, Hoover, Vance, Harpster, Rogers, Salamon, Bumbarger, Foster, Nicholas, Cienfuegos, Miller, and Zong) and **AGAINST** Plaintiff on Count XIV.

- viii. DOC Defendants' third motion for summary judgment is **GRANTED** with respect to Plaintiff's defamation claim (Count XV) and invasion of privacy claim (Count XVI) as to all DOC Defendants (Rogers, Bumbarger, Foster, Nicholas, Cienfuegos, and Miller). Judgment

is hereby entered **IN FAVOR OF** all DOC Defendants (Rogers, Bumbarger, Foster, Nicholas, Cienfuegos, and Miller) and **AGAINST** Plaintiff on Counts XV and XVI.

4. Based on the disposition of the R&Rs and motions for summary judgment as described above, the following claims against the following Defendants remain for trial:
 - a. Count I – Violation of Eighth Amendment (sexual assault) against Defendant Zong.
 - b. Count II – Violation of Eighth Amendment (deliberate indifference) against Defendants Zong, Rogers, Bumbarger, Nicholas, Cienfuegos, Foster, and Miller.
 - c. Count III – Violation of Fourteenth Amendment (invasion of privacy) against Defendants Zong, Rogers, Bumbarger, Nicholas, Cienfuegos, Foster, and Miller.
 - d. Count IV – Violation of Fourth Amendment (unreasonable search and seizure) against Defendant Zong.
 - e. Count V – Violation of Fourth and Eighth Amendments (failure to intervene) against Defendants Rogers, Bumbarger, Nicholas, Cienfuegos, Foster, and Miller.

- f. Count VI – Violation of Fourth and Eighth Amendments (failure to supervise) against Defendant Rogers.
 - g. Count XII – Sexual Assault claim against Defendant Zong.
 - h. Count XIII – Sexual Battery claim against Defendant Zong.
 - i. Count XVI – Invasion of Privacy claim against Defendant Zong.
5. A telephone conference to schedule the above-captioned matter for trial shall be held on **Monday, August 12, 2019, at 11:00 a.m.** Plaintiff's counsel is responsible for arranging the call to (570) 207-5750, and all parties should be ready to proceed before the undersigned is contacted.



Robert D. Mariani
United States District Judge